

REMARKS

Entry of the foregoing amendments is respectfully requested.

Summary of Amendments

Upon entry of the foregoing amendments claims 16-45 are cancelled and claims 46-75 are added, whereby claims 46-75 will be pending, claims 46 and 64 being independent claims.

Support for the new claims can be found throughout the present specification (see, e.g., page 6) and the cancelled claims.

It is pointed out that the cancellation of claims 16-45 is without prejudice or disclaimer, and Applicants expressly reserve the right to prosecute the cancelled claims in one or more continuation and/or divisional applications.

Summary of Office Action

Claims 16-45 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Claims 16, 19, 25-27, 31-33 and 36-41 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Brunig et al., U.S. Patent No. 6,942,871 (hereafter "BRUNIG").

Claims 18, 20-24, 42 and 44 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BRUNIG in view of Diec et al., U.S. Patent No. 6,468,551 (hereafter "DIEC").

Claims 17, 43 and 45 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BRUNIG in view of DIEC and further in view of Hart, U.S. Patent No. 4,078,050 (hereafter "HART").

Response to Office Action

Reconsideration and withdrawal of the rejections of record are respectfully requested in view of the foregoing amendments and the following remarks.

Response to Rejection of Claims under 35 U.S.C. § 112, Second Paragraph

Claims 16-45 are rejected under 35 U.S.C. § 112, second paragraph, as being indefinite for allegedly failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention.

Applicants respectfully disagree with the Examiner with respect to the allegations set forth in the present Office Action in this regard. For example, it is well known in patent practice that the phrase "at least one of" in a claim is synonymous for "and/or".

At any rate, the rejected claims have been cancelled, wherefore this rejection is moot.

Response to Rejections of Claims under 35 U.S.C. § 103(a)

Claims 16, 19, 25-27, 31-33 and 36-41 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BRUNIG. Claims 18, 20-24, 42 and 44 are rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over BRUNIG in view of DIEC. Claims 17, 43 and 45 are rejected under 35 U.S.C. § 103(a) as allegedly being

unpatentable over BRUNIG in view of DIEC and further in view of HART. The rejections essentially allege that BRUNIG discloses all of the elements which are recited in claims 16, 19, 25-27, 31-33 and 36-41 individually but concede that this document fails to exemplify the recited components in a microemulsion. In this regard, the Examiner takes the position that it would have been obvious to one of ordinary skill in the art to prepare a microemulsion with antiperspirant actives and α -hydroxycarboxylic acids since they allegedly are both useful components in the preparation of antiperspirant gels and sticks based on microemulsions. The rejections further concede that BRUNIG does not specifically teach an oil-in-water emulsion which comprises an oil phase, a water phase and emulsifiers but allege that this deficiency of BRUNIG is cured by DIEC. With respect to claims 17, 43 and 45 the rejection concedes that BRUNIG and DIEC do not teach the α -hydroxycarboxylic acid mandelic acid but alleges that this deficiency is cured by HART.

Applicants respectfully (and strongly) disagree with the Examiner in this regard as well. At any rate, the rejected claims have been cancelled, wherefore these rejections are moot.

Applicants note that the independent claims submitted herewith both recite, *inter alia*, that the claimed cosmetic formulation comprises one or more α -hydroxycarboxylic acids which comprise mandelic acid. It further is noted that in this regard the Examiner essentially takes the position that since BRUNIG teaches that the microemulsions taught therein may contain α -hydroxycarboxylic acids and HART teaches that the deodorant compositions disclosed therein may contain α -hydroxycarboxylic acids such as, e.g., mandelic acid, it would allegedly have been obvious to one of ordinary skill in the art to

include mandelic acid as α -hydroxycarboxylic acid in the microemulsions of BRUNIG. Applicants respectfully submit that the Examiner is clearly mistaken in this respect.

In particular, there is no motivation for one of ordinary skill in the art to combine the teachings of BRUNIG and HART because these documents are concerned with completely unrelated subject matter. For example, according to the title of BRUNIG, this document relates to highly viscous microemulsions based on sugar surfactants, oily bodies and aluminium salts and the use thereof in the production of anti-perspirant gel and stick preparations. Further, in col. 2, lines 2-14 BRUNIG states (emphasis added):

It has surprisingly been found that the combination of sugar surfactants, oil components and aluminium-zirconium salts leads to clear transparent microemulsions with viscosities of at least 100,000 mPas, preferably 400,000 mPas and more particularly 800,000 to 3,000,000 mPas.

Besides their stability and transparency, the formulations according to the invention have a consistency which enables them to be processed into gels or sticks. Conventional polymeric thickeners, which are attended by the disadvantage that they leave the skin feeling sticky, can be reduced or even avoided altogether. Oily and aqueous solutions can be processed in the formulation so that homogeneous distribution is simplified.

In comparison, HART relates neither to microemulsions, let alone microemulsions based on sugar surfactants, oily bodies and aluminium salts, nor to anti-perspirants, let alone to antiperspirant gel and stick preparations.

Specifically, according to the abstract of HART “[o]ffensive odors of animal origin are lessened or neutralized by application of deodorant compositions comprising 2,4-di (alkyl or aryl) substituted 6-hydroxy-1,3-dioxanes. The effectiveness of the compositions toward specific odors is increased by incorporation of acidic or basic components. The compositions can be further improved by the addition of other

ingredients such as surfactants, chelating agents and antimicrobial agents.” Further, in col. 2, lines 3-24, HART states (emphasis added):

I have discovered that unpleasant odors associated with feline animals, excreta, necrotic tissue and skunks can be greatly reduced or eliminated by treating the source of the odor with mildly acidic formulations containing one or more of the 2,4-disubstituted (alkyl or aryl)-6-hydroxy-1,3-dioxanes. Application on used cat litter eliminates the unpleasant odors which build up in cat boxes. These formulations may be also used on furniture, carpeting and flooring contaminated with excreta. For example, they have the advantage of eliminating urine odors so that the animal does not return to the same place to urinate. In veterinarians' offices, the use of these deodorants on base boards, carpeting and flooring reduces the incidence of urination by dogs. Dogs will often urinate in an area where the odor of urine is detected, but are apparently reluctant to do so if urine odor is not smelled.

In veterinary medicine and mortuary science, these deodorants are useful for deodorizing necrotic tissue.

These deodorants are also effective in greatly reducing or eliminating the odor of skunk from animals, cars, camping equipment and the like.

The above comparison should make it more than evident that someone wishing to modify the antiperspirant microemulsions of BRUNIG does not have any reason to look in HART for corresponding suggestions.

Further, even if one were to assume, *arguendo*, that one of ordinary skill in the art would be motivated to combine the teachings of BRUNIG and HART it is not seen that in view thereof, he or she would have any apparent reason to use mandelic acid in the microemulsions of BRUNIG. In particular, BRUNIG discloses that one of the types of optional ingredients which may be incorporated into the microemulsions disclosed therein are antioxidants. In the passage from col. 8, line 51 to col. 9, line 26 BRUNIG provides a laundry list of examples of substances of most diverse structure which may be employed as antioxidants, *inter alia*, “ α -hydroxy acids (for example citric acid, lactic acid, malic acid)”.

While HART mentions two of these acids, citric acid and lactic acid, as examples of carboxylic acids which may be present in the deodorizing compositions disclosed therein, according to HART these acids are not employed as antioxidants (as in BRUNIG) but merely to control the pH of the corresponding compositions. In particular, in col. 3, lines 24-36, HART states (emphasis added):

Suitable acidic components include organic carboxylic acids, e.g. benzoic, maleic, glycolic, pyruvic, lactic, fumaric, citric, mandelic, succinic and tartaric acids, and acidic inorganic salts, e.g. ammonium chloride and sodium dihydrogen phosphate. Suitable basic components include the inorganic basic salts, e.g. alkali metal carbonates, bicarbonates, dibasic phosphates and acetates; and non-primary organic amines such as diethanolamine and triethanolamine. These compounds control the pH of the aqueous liquid vehicle. As above indicated, for certain uses a mildly acidic formulation is preferred, and for certain other uses an alkaline formulation is preferred.

In view of the foregoing, there is no reason for one of ordinary skill in the art to assume that all of the carboxylic acids which are mentioned in HART as examples of acidic components for controlling the pH of the deodorizing compositions disclosed therein are also suitable as antioxidants for the antiperspirant microemulsions of BRUNIG. For example, several of the carboxylic acids mentioned in HART are not α -hydroxy acids (e.g., benzoic acid, maleic acid, fumaric acid, succinic acid). Moreover, the α -hydroxy acids mentioned by BRUNIG are aliphatic acids, whereas mandelic acid is an aromatic carboxylic acid and it is not even known whether aromatic α -hydroxy acids and in particular, mandelic acid, have any antioxidant properties which would make them suitable for the purposes of BRUNIG.

Applicants submit that for at least all of the foregoing reasons, BRUNIG in view of DIEC and HART is unable to render obvious the subject matter of any of the claims

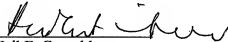
submitted herewith. Accordingly, withdrawal of the present rejections under 35 U.S.C. § 103(a) is warranted and respectfully requested.

CONCLUSION

In view of the foregoing, it is believed that all of the claims in this application are in condition for allowance, which action is respectfully requested. If any issues yet remain which can be resolved by a telephone conference, the Examiner is respectfully invited to contact the undersigned at the telephone number below.

Applicants point out that a Supplemental Information Disclosure Statement is being filed concurrently herewith. Accordingly, the Examiner is respectfully requested to indicate consideration of the cited documents by returning a signed and initialed Form PTO-1449 with the next communication.

Respectfully submitted,
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